UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA

-against-

MEMORANDUM & ORDER
20-CR-201-EK

AFRICAN FRAZIER,

Defendant.

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ERIC KOMITEE, United States District Judge:

Defendant African Frazier is charged with possessing a firearm after having been convicted of a felony, in violation of 18 U.S.C. § 922(g). In February 2020, parole officers employed by the New York State Department of Corrections and Community Supervision (DOCCS) conducted a search of his apartment and recovered a loaded .40-caliber pistol. Frazier moves to suppress the firearm and his post-search statements. Def. Mot., ECF No. 24-1. For the reasons set forth below, that motion is DENIED.

I.

In July 2015, the Defendant applied for release from prison to parole. He signed an "Application for Conditional Release to Parole Supervision" in which he acceded to certain "Conditions of Release" — one of which was that Frazier would "permit [his] Parole Officer to visit [him] at [his] residence and/or place of employment and [] permit the search and

inspection of [his] person, residence and property." Gov't Br. Exhibit B at 4, ECF No. 26-2. Frazier's parole application was granted that same day. Upon release, he was placed under DOCCS supervision until July 31, 2020. Compl. ¶ 2, ECF No. 1. Entering on parole, Frazier again consented to search, signing a "Certificate of Release to Parole Supervision" that stated: "I, African FRAZIER, voluntarily accept Parole Supervision. I fully understand that my person, residence and property are subject to search and inspection"; and, "I will permit my Parole Officer to visit me at my residence and/or place of employment and I will permit the search and inspection of my person, residence and property." Gov't Br. Exhibit B at 2. Mr. Frazier also certified that he would not possess a firearm. *Id.*

In February 2020, the New York City Police Department received a "reliable tip" that the Defendant had a firearm in his apartment. Compl. ¶ 3. This tip was transmitted to DOCCS, and on February 24, 2020, parole officers searched the Defendant's apartment and found the loaded gun in question. *Id.* ¶¶ 4-6.

The Defendant argues that this search violated the Fourth Amendment. He contends that "his status as a parolee does not strip him of the Fourth Amendment's protections." Def. Mot. at 3. He also moves to suppress his subsequent statements as the fruits of an unlawful search. *Id.* at 5.

II.

The Supreme Court held in *Samson v. California* that "the Fourth Amendment does not prohibit" even a "suspicionless search of a parolee" or his residence. 547 U.S. 843, 857 (2006). The Supreme Court reached this conclusion after "[e]xamining the totality of the circumstances pertaining to petitioner's status as a parolee" and finding that he "did not have an expectation of privacy that society would recognize as legitimate." *Id.* at 852. In so ruling, the Court noted that the petitioner had agreed, as a condition of his release, to submit to suspicionless search at any time; but the Court expressly declined to rest its holding on the "acceptance of the search condition [as] consent" rationale. *Id.* at 852 n.3. Instead, the Court held that parolees have "severely diminished expectations of privacy" even absent such consent, because while on parole they remain "on the 'continuum' of state-imposed punishments" in a status that is "more akin to imprisonment" than other statuses. *Id.* at 850, 852. To the extent *Samson* controls here, the Defendant's motion must be denied.

There is, however, a lingering question in the Second Circuit about whether *Samson* superseded the standard previously applied to parole searches — namely, the standard articulated in *People v. Huntley*, 43 N.Y.2d 175 (1977). In *Black v. Petitinato*, 761 F. App'x 18, 21 (2d Cir. 2019), for example, the

court recognized that "the law is unclear whether the *Huntley* standard has been superseded by *Samson*," and that the Circuit had "noted on several occasions that it is an open question whether *Samson* may justify a parole officer's suspicionless search of a New York parolee's home." This lack of clarity arises because the California statute at issue in *Samson* explicitly allowed for search without cause by a parole officer, and New York's regulations do not contain the same language. *See, e.g., United States v. Watts*, 301 F. App'x 39, 42 n.2 (2d Cir. 2008) (discussing N.Y. Comp. Codes R. & Regs. Tit. 9, § 8003.2(d)); *United States v. White*, 622 F. Supp. 2d 34, 41 (S.D.N.Y. 2008) (collecting cases). But even if *Huntley*, and not *Samson*, governs, the search here would still survive challenge.

Huntley "authorizes a parole officer to search a parolee's home or person, without a search warrant, if the search is 'rationally and reasonably related to the performance of his duty as a parole officer.'" *United States v. Lambus*, 897 F.3d 368, 403 (2d Cir. 2018) (quoting *Huntley*, 43 N.Y.2d at 179). A parole officer has a duty "to investigate whether a parolee is violating the conditions of his parole," including "that the parolee commit no further crimes" — here, the possession of a firearm. *See United States v. Barner*, 666 F.3d 79, 85 (2d Cir. 2012); *United States v. Newton*, 369 F.3d 659,

666 (2d Cir. 2004). The instant search was conducted pursuant to a tip received by law enforcement that the parolee had a firearm in his apartment. The Second Circuit has treated parole searches effectuated pursuant to such a tip as presumptively "rationally and reasonably related" to the parole officer's job duties, absent affirmative indications of unreliability, and there are no such indications present here. *See United States v. Reyes*, 283 F.3d 446, 463 (2d Cir. 2002). Accordingly, the instant search survives scrutiny under *Huntley* as well.

For the foregoing reasons, the Defendant's motion to suppress is denied.

SO ORDERED.

/s Eric Komitee
ERIC KOMITEE
United States District Judge

Dated: November 4, 2020
Brooklyn, New York